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Gerardo Hernandez

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

GERARDO HERNANDEZ,

Plaintiff,

vs.

ULLATTIL, LLC dba ERNIE'S LIQUORS;  
JOHNY MATHEW, Trustee of the JOHNY  
MATHEW AND SUJA MATHEW 2000  
REVOCABLE TRUST dated June 9, 2000;  
SUJA MATHEW, Trustee of the JOHNY  
MATHEW AND SUJA MATHEW 2000  
REVOCABLE TRUST dated June 9, 2000,

Defendants.

No.

**COMPLAINT ASSERTING DENIAL OF  
RIGHT OF ACCESS UNDER THE  
AMERICANS WITH DISABILITIES ACT  
FOR INJUNCTIVE RELIEF, DAMAGES,  
ATTORNEYS' FEES AND COSTS (ADA)**

**I. SUMMARY**

1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Ernie's Liquors  
3870 El Camino Real  
Palo Alto, CA 94306  
(hereafter "the Facility")



1           10. Plaintiff lives near the Facility and visited the Facility on or about January 30,  
2 2019 for the purpose of buying snacks. During his visit to the Facility, Plaintiff encountered the  
3 following barriers (both physical and intangible) that interfered with, if not outright denied,  
4 Plaintiff's ability to use and enjoy the goods, services, privileges and accommodations offered  
5 at the Facility:

- 6           a) Plaintiff could not find any accessible parking at the Facility and had to  
7 park in a regular parking space near the front of the Facility. There was  
8 no accessible path of travel between his parking space and the entrance  
9 to the Facility, and he worried other cars would not be able to see him as  
10 he made his way to the entrance.
- 11           b) The entry door to the Facility was heavy and difficult for Plaintiff to  
12 open.
- 13           c) The area inside the Facility entrance was obstructed by a cooler, which  
14 made it difficult for Plaintiff to maneuver through the doorway.
- 15           d) Many of the aisles throughout the Facility were narrow and Plaintiff had  
16 difficulty maneuvering through them. Some of the items that he wanted  
17 to purchase were located in aisles that were so narrow he was not able to  
18 access them, and so he could not purchase those items.

19           11. The barriers identified in paragraph 10 herein are only those that Plaintiff  
20 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist  
21 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once  
22 such additional barriers are identified as it is Plaintiff's intention to have all barriers which  
23 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

24           12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
25 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
26 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
27 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
28 once the barriers are removed.

13. Defendants knew, or should have known, that these elements and areas of the Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to the physically disabled. Moreover, Defendants have the financial resources to remove these barriers from the Facility (without much difficulty or expense), and make the Facility accessible to the physically disabled. To date, however, Defendants refuse to either remove those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

14. At all relevant times, Defendants have possessed and enjoyed sufficient control and authority to modify the Facility to remove impediments to wheelchair access and to comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for Accessible Design. Defendants have not removed such impediments and have not modified the Facility to conform to accessibility standards. Defendants have intentionally maintained the Facility in its current condition and have intentionally refrained from altering the Facility so that it complies with the accessibility standards.

15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is so obvious as to establish Defendants' discriminatory intent. On information and belief, Plaintiff avers that evidence of this discriminatory intent includes Defendants' refusal to adhere to relevant building standards; disregard for the building plans and permits issued for the Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the Facility; decision not to remove barriers from the Facility; and allowance that Defendants' property continues to exist in its non-compliant state. Plaintiff further alleges, on information and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

## **VI. FIRST CLAIM**

### **Americans with Disabilities Act of 1990**

#### **Denial of "Full and Equal" Enjoyment and Use**

16. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17. Title III of the ADA holds as a "general rule" that no individual shall be

1 discriminated against on the basis of disability in the full and equal enjoyment (or use) of  
2 goods, services, facilities, privileges, and accommodations offered by any person who owns,  
3 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

4 18. Defendants discriminated against Plaintiff by denying Plaintiff “full and equal  
5 enjoyment” and use of the goods, services, facilities, privileges and accommodations of the  
6 Facility during each visit and each incident of deterrence.

7 Failure to Remove Architectural Barriers in an Existing Facility

8 19. The ADA specifically prohibits failing to remove architectural barriers, which  
9 are structural in nature, in existing facilities where such removal is readily achievable. 42  
10 U.S.C. § 12182(b)(2)(A)(iv).

11 20. When an entity can demonstrate that removal of a barrier is not readily  
12 achievable, a failure to make goods, services, facilities, or accommodations available through  
13 alternative methods is also specifically prohibited if these methods are readily achievable. *Id.*  
14 § 12182(b)(2)(A)(v).

15 21. Here, Plaintiff alleges that Defendants can easily remove the architectural  
16 barriers at the Facility without much difficulty or expense, and that Defendants violated the  
17 ADA by failing to remove those barriers, when it was readily achievable to do so.

18 22. In the alternative, if it was not “readily achievable” for Defendants to remove  
19 the Facility’s barriers, then Defendants violated the ADA by failing to make the required  
20 services available through alternative methods, which are readily achievable.

21 Failure to Design and Construct an Accessible Facility

22 23. Plaintiff alleges on information and belief that the Facility was designed and  
23 constructed (or both) after January 26, 1993 – independently triggering access requirements  
24 under Title III of the ADA.

25 24. The ADA also prohibits designing and constructing facilities for first occupancy  
26 after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with  
27 disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

28 25. Here, Defendants violated the ADA by designing and constructing (or both) the

Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. *Id.*

28. Here, Defendants altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendants violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

Failure to Maintain Accessible Features

31. Defendants additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendants to maintain the Facility in an accessible condition

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

1 was not an isolated or temporary interruption in service or access due to maintenance or  
2 repairs.

3 33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney  
4 fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

## 5 **VII. SECOND CLAIM**

### 6 **Unruh Act**

7 34. Plaintiff re-pleads and incorporates by reference the allegations contained in  
8 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

9 35. California Civil Code § 51 states, in part, that: All persons within the  
10 jurisdiction of this state are entitled to the full and equal accommodations, advantages,  
11 facilities, privileges, or services in all business establishments of every kind whatsoever.

12 36. California Civil Code § 51.5 also states, in part that: No business establishment  
13 of any kind whatsoever shall discriminate against any person in this state because of the  
14 disability of the person.

15 37. California Civil Code § 51(f) specifically incorporates (by reference) an  
16 individual's rights under the ADA into the Unruh Act.

17 38. Defendants' aforementioned acts and omissions denied the physically disabled  
18 public – including Plaintiff – full and equal accommodations, advantages, facilities, privileges  
19 and services in a business establishment (because of their physical disability).

20 39. These acts and omissions (including the ones that violate the ADA) denied,  
21 aided or incited a denial, or discriminated against Plaintiff by violating the Unruh Act.

22 40. Plaintiff was damaged by Defendants' wrongful conduct, and seeks statutory  
23 minimum damages of \$4,000 for each offense.

24 41. Plaintiff also seeks to enjoin Defendants from violating the Unruh Act (and  
25 ADA), and recover reasonable attorneys' fees and costs incurred under California Civil Code  
26 § 52(a).

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# **VIII. THIRD CLAIM**

## **Denial of Full and Equal Access to Public Facilities**

42. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

43. Health and Safety Code § 19955(a) states, in part, that: California public accommodations or facilities (built with private funds) shall adhere to the provisions of Government Code § 4450.

44. Health and Safety Code § 19959 states, in part, that: Every existing (non-exempt) public accommodation constructed prior to July 1, 1970, which is altered or structurally repaired, is required to comply with this chapter.

45. Plaintiff alleges the Facility is a public accommodation constructed, altered, or repaired in a manner that violates Part 5.5 of the Health and Safety Code or Government Code § 4450 (or both), and that the Facility was not exempt under Health and Safety Code § 19956.

46. Defendants' non-compliance with these requirements at the Facility aggrieved (or potentially aggrieved) Plaintiff and other persons with physical disabilities. Accordingly, Plaintiff seeks injunctive relief and attorney fees pursuant to Health and Safety Code § 19953.

## **IX. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

1. Injunctive relief, preventive relief, or any other relief the Court deems proper.
2. Statutory minimum damages under section 52(a) of the California Civil Code according to proof.
3. Attorneys' fees, litigation expenses, and costs of suit.<sup>2</sup>
4. Interest at the legal rate from the date of the filing of this action.

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<sup>2</sup> This includes attorneys' fees under California Code of Civil Procedure § 1021.5.



1           5.       For such other and further relief as the Court deems proper.

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3       Dated: March 5, 2019

MOORE LAW FIRM P.C.

4                       /s/ Tanya E. Moore

5                       Tanya E. Moore

6                       Attorney for Plaintiff

Gerardo Hernandez

## VERIFICATION

I, GERARDO HERNANDEZ, am the plaintiff in the above-entitled action. I have read the foregoing Complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I verify under penalty of perjury that the foregoing is true and correct.

Dated: March 5, 2019

/s/ Gerardo Hernandez  
Gerardo Hernandez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

/s/ Tanya E. Moore  
Tanya E. Moore, Attorney for  
Plaintiff, Gerardo Hernandez